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DECISION
ON PETITION

BAKER BOTTS L.L.P.
ONE SHELL PLAZA
910 LOUISIANA
HOUSTON TX 77002-4995

In re Application of:
Avinoam RUBINSTAIN, et al.
Application No. 09/322,062
Filed: May 27, 1999
For: HIGH DATA RATE ETHERNET
TRANSPORT FACILITY OVER DIGITAL
SUBSCRIBER LINES

This is a response to the petition for withdrawal of the holding of abandonment, filed April 12, 2004. The petition is being treated under 37 CFR 1.8(b) to withdraw the holding of abandonment.

The petition is granted.

This application became abandoned for failure to timely file a response to the Office action mailed December 4, 2002, which set a shortened statutory period of three (3) months to reply. A Notice of Abandonment was mailed on March 22, 2004.

Petitioner alleges to have timely filed a response to the Office action on June 4, 2003. To support this position, Petitioner has included with the instant petition a copy of the response bearing a proper certificate of facsimile transmission with a transmission date of June 4, 2003. Also included with the petition is a copy of an Auto-Reply Facsimile Transmission indicating that an 11 page document from Petitioner was received in the U.S. Patent and Trademark Office on June 4, 2003.

37 C.F.R. § 1.8(b) states that in the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence,

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate, and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioner has met the requirements above. Accordingly, the Notice of Abandonment is vacated and the holding of abandonment withdrawn.

The application file will be forwarded to the Technology Center's technical support staff for entry of the response and for charging petitioner's deposit account No. 13-2490 \$930 for a three month extension of time included with the response. From there, the file will be forwarded to the examiner for consideration in due course.



Kenneth A. Wieder
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Technology Center 2600
Communications